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ABSTRACT

The fairness doctrine was established by the Federal Communications Commission (FCC) to promote public debate over the media and to ensure that opposing viewpoints be heard on issues of public importance. To change the image of women as portrayed in the mass media, the National Organization for Women (NOW) focused on television because of the pervasive influence and effect it was assumed to have on the public. In 1971, NOW launched a campaign to monitor both network and local television broadcasting across the country. On the basis of these data, NOW filed petitions in 1972 against the license renewals of two television stations for, among other objections, their alleged failure to comply with the requirements of the fairness doctrine. NOW argued that the role of women in society is a controversial issue of public importance, but that these stations presented only one side of the issue in their programing, which portrayed women as primarily valuable for their supportive services and physical attractiveness. The FCC rejected NOW's petitions without benefit of an evidentiary hearing. While agreeing that entertainment programing could raise controversial issues, the FCC concluded that the fairness doctrine applied only if the programing amounted to "advocating a position" on the issue. (DF)

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The description and analysis of the history of the fairness doctrine and of NOW's fairness doctrine complaints before the FCC and the Court of Appeals demonstrate the confusion and ambiguity surrounding that policy.

MINORITY VOICE IN THE MARKETPLACE OF IDEAS: A CASE STUDY OF WOMEN AND THE FAIRNESS DOCTRINE

by

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MINORITY VOICES IN THE MARKETPLACE OF IDEAS: A CASE STUDY OF WOMEN AND THE FAIRNESS DOCTRINE

The philosophy behind the American constitutional approach to First Amendment freedom derives, in large part, from the writings of early libertarians such as John Locke, John Milton and John Stuart Mill who argued that freedom of thought and expression are essential to a healthy society and social progress. Knowledge and truth, Mill reasoned, are the keys to social progress and can only be realized through the clash of diverse and antagonistic opinions and ideas in an open forum. Milton argued that the essential element of this forum is the complete absence of government control and domination. "We do injuriously by licensing and prohibiting to misdoubt [truth's] strength," Mill wrote, "let her and falsehood grapple; who ever knew truth put to the worse, in a free and open encounter?"[1]

The framers of the Bill of Rights accepted these libertarian assumptions and commanded in the First Amendment that "Congress shall make no law. . .abridging the freedom of speech or of the press. . ." When this amendment was first tested and interpreted by the U. S. Supreme Court, Justice Holmes posited that only in a dangerous emergency could government take exception to this command because "ultimate good. . .is better reached by free trade in ideas. . .[and] the best test of truth is the power of the thought to get itself accepted in the competition of the market."[2] Thus the theory emerged that a free and open "marketplace of ideas" is necessary to the survival of our democratic system, and the First Amendment is a shield to protect that market place through its prohibition of government involvement with the freedom of speech and the press.

Ironically, with technological developments and the advent of broadcasting in the early part of the twentieth century, this theory was turned upside down. Because the broadcast spectrum is finite, access to the airwaves is limited and the market place of ideas might be monopolized by private interests assigned to the spectrum. Therefore, the government reasoned that regulation of broadcasting is necessary to maintain an open forum for the expression of a diversity of ideas. Thus, while the first Amendment is interpreted as a protection against government involvement in most forms of communication, it is contrued as a justification for government regulation of broadcast communication.

The regulation of broadcasting is assigned to the Federal Communication Commission, and the regulatory scheme developed by this federal agency encompasses a multiplicity of rules, regulations and policies. Within this scheme, the fairness doctrine stands out because it was established by the FCC specifically to promote public debate over the air and to ensure that opposing viewpoints be heard on issues of public importance.[3] The fairness doctrine, then, is most significant as a

policy designed to provide an open marketplace for the free expression of opinions and ideas in broadcast communication.

Although this doctrine has been part of broadcast regulation for many years, it has recently become an explosive and controversial issue. Both houses of Congress are considering legislation to repeal the doctrine,[4] while supporters are pressuring the FCC to more actively enforce the doctrine and give minority groups greater access to airwaves.[5] Opponents of the doctrine argue that the requirement it places on broadcasters to air opposing views when they present one side of a controversial issue is an unreasonable censorship or programming which violates the rights guaranteed to broadcasters under the First Amendment. Moreover, the opponents argue, the doctrine works against its own purported goals because broadcasters are inhibited by a fear of FCC sanctions for not complying with the doctrine and, therefore, avoid airing controversial issues altogether and provide bland, timid programming instead.[6] Fairness doctrine proponents counter by arguing that without the doctrine broadcasters could abuse their vast power by airing only their own one-sided views and opinions. In addition, proponents of the doctrine maintain that broadcasters who are motivated for financial reasons to please advertisers would present even more bland programming in the absence of fairness doctrine requirements to deal with controversial issues.[7]

Central to the controversy surrounding the fairness doctrine is the inability of the FCC to define the doctrine and suggest consistent boundaries for its application to the courts, broadcasters or the public. Chris Welles aptly summarized these difficulties when he said: "The problem with the Doctrine is that, while everybody is in favor of being 'fair' few people can agree on what fairness means in practice or how it should be achieved and guaranteed."[8] Indeed, those on both sides of the conflict seem to agree that the doctrine does not work because the FCC has given it too many conflicting interpretations and has applied it arbitrarily.

An attempt to analyze the FCC's application of the fairness doctrine to determine what, if any, uniform standards the Commission applies is difficult because most attempts to invoke the doctrine are based on single programs or product commercials. However, in the early 1970's local women's organizations affiliated with the National Organization of Women brought fairness complaints in petitions to deny the license renewals of television stations in seven U. S. cities, including WRC-TV in Washington, D.C. and WABC-TV in New York City. These petitions to deny challenged the fairness of the stations' <u>overall</u> programming and, thus, represent the effort of a substantial minority group to force a broad interpretation of the fairness doctrine. As such, these challenges provide an excellent case study to explore the meaning of the doctrine.

This paper provides a brief historical background of the evaluation, interpretation and application of the fairness doctrine and then focuses on an analysis of the FCC's adjudication of the fairness complaints brought by the women's organizations. The purpose of the study is to demonstrate, analyze and discuss the fairness doctrine within a specific context, to suggest why the doctrine has failed to achieve its intended goals and to pose alternative ways of maximizing the diversity of ideas in broadcast communication.

I

Although the fairness doctrine was not officially articulated until 1949, its roots can be traced through Supreme Court decisions and FCC rulings in the 1940's and 1930's to the Radio Act of 1927. The Act established the Federal Radio Commission and gave it the authority to select and issue renewable licenses to those competing for access to the airwaves. Any right of censorship over program content was specifically denied to the FRC, but the Commission was charged with the respon-

sibility of assuring that broadcasters operate according to "the public interest, convenience or necessity."[9] The rights of the FRC, and later the FCC,[10] to issue broadcast licenses and to apply the public interest clause as a standard for awarding or renewing licenses were upheld by the U. S. Supreme Court in 1932 and 1943.[11] Based on these decisions, the FCC gave further meaning to the public interest clause and alluded to the concept of fairness as a part of that clause when they decided the WHKC and Scott cases in the mid-forties. In both of these decisions, the Commission emphasized that it is the duty of the broadcast licensee "to be sensitive to the problems of public concern in the community and to make sufficient time available, on a non-discriminatory basis, for full discussion thereof." Moreover, the FCC said, the licensee should deal with these problems "with fairness" to all concerned.[12]

Finally, in its 1949 Editorializing Report, the FCC attempted to specifically define the "public interest, convenience and necessity" and, in so doing, gave its first comprehensive official statement of the fairness doctrine.[13] In order to operate in the public interest and provide a forum for free expression, broadcasters must, the FCC held, "provide a reasonable amount of time for the presentation over their facilities of programs devoted to discussion and consideration of public issues," and they must design this programming "so that the public has an opportunity to hear different opposing positions."[14] Thus the doctrine imposes a dual obligation on broadcasters to give coverage to controversial issues of public importance and to broadcast diverse and conflicting opinions on these controversial issues.

The fairness doctrine was codified in 1959,[15] and the FCC issued its first report clarifying the intent and administration of the doctrine five years later.[16] But it was not until two federal court decisions were issued in 1966 and 1969 that the doctrine gained meaning and importance for broadcasters and the public. In Office of Communications of United Church of Christ v. FCC, the right of citizens groups to intervene in broadcast license renewal proceeding before the FCC was upheld.[17] Then, in the Red Lion decision, the Supreme Court ruled that the fairness doctrine does not violate the Consitution but is required by it because the doctrine promotes "the purpose of the First Amendment to preserve an uninhibited marketplace of ideas. . ."[18] Therefore, the Court reasoned, "It is the right of the viewers and listeners, not the right of the broadcasters which is paramount. . . [and it] is the right of the public to receive suitable access to social, political, esthetic, moral and other ideas. . ."[19] As a result of these two decisions, the general public could for the first time seek and obtain a hearing before the FCC and challenge the renewal of a broadcaster's license on the basis of, among other things, the station's failure to comply with the constitutionally required fairness doctrine obligations.

Fairness doctrine complaints increased sharply after these new legal principles were established,[20] and the FCC was under constant pressure to interpret the doctrine and explicate its meaning for the expanding legions of listeners and viewers who wanted access to the marketplace of ideas. However, the Commission avoided a precise definition of "fairness for all situations" and maintained its policy of handling fairness complaints on a case by case basis.[21] For example, the Commission ruled that the health hazards of cigarette smoking constituted a controversial issue of public importance; thus, broadcasters who accepted cigarette ads were required to provide time for anti-smoking announcements.[22] In a similar situation, the FCC held that Esso's television advertisements which contended that oil could be transported by an Alaskan pipeline without ecological damage raised a controversial issue to which the fairness doctrine applied.[23] This meant that licensees had to provide programming to present contrasting views from environmentalists who opposed the pipeline. Finally, the Commission issued the first denial of a broadcaster's application for license renewal on the basis of the fairness doctrine.[24]

Based on evidence presented by citizens groups, the FCC held that radio station WXYR in Media, Pennsylvania failed to seek out opposing viewpoints to counteract its own conservative programming.

Yet during this same time period, the FCC issued a series of contrasting and conflicting fairness doctrine decisions. They reversed their ruling on cigarette advertisements saying that new developments made the hazards of smoking clearer; therefore, the issue was no longer controversial.[25] In addition, two peace groups failed to win time to counter recruitment spots for military service;[26] a striking labor union was denied time to publicize a boycott in response to ads from their employers;[27] and anti-pollution groups were denied the right to reply to automobile advertisements.[28] In each case, the FCC held that no controversial issue of public importance was raised; hence, the Commission refused to invoke the fairness doctrine.

In sum, by 1972 the fairness doctrine was a serious problem for the FCC. That the Commission was unsure of the doctrine's meaning and application is evidenced by the disparate decisions chronicled above. The federal courts added to the mounting confusion when they reversed FCC rulings in two of the fairness cases, yet upheld other fairness doctrine decisions made by the Commission.[29] In addition, with encouragement from the United Church of Christ and Red Lion decisions the public filed nearly 3,000 fairness complaints in 1971 and 1972.[30] Most of these came from racial or ethnic minority groups and consumer organizations who charged broadcasters with presenting discriminatory stereotypes and with failing to warn the public of the deleterious effects of products they advertised. Invoking the fairness doctrine, these groups demanded access to the airwaves and to programming decisions. Broadcasters, on the other hand, began pressuring the FCC to clarify its interpretation of the doctrine and tell them how to meet its requirements and avoid the increasing, costly license renewal challenges and fairness complaints. In the midst of this confusion, the FCC announced that "the time has come for a reassessment and clarification of basic [fairness doctrine] policy." and they began an extensive inquiry into the efficacy of the doctrine.[31] At the same time, the National Organization of Women initiated actions to deny the license renewals of several major television stations, charging the stations with failure to comply with fairness doctrine obligations.

II

When the National Organization of Women was formed in 1966 to spearhead the growing feminist movement in America, one of the primary objectives adopted by the group was to change the image of women projected by the mass media. The organization accused the media or presenting false images of women which "perpetuate contempt for women by society and by women for themselves."[32] Television quickly became the principal target of women's efforts to change the mass media's portrayal of women because of the pervasive influence and effect it was assumed to have on the viewing public. These efforts were bolstered by the rhetoric of feminist writers who attacked the medium for "failing to provide human models for a bright thirteen year old girl who would like to be more than an ecstatic floor washer,"[33] and for failing to recognize that "when over fifty-five percent of [American] women are high school graduates and twenty-five percent have attended college. . .at the very least [women] deserve recognition as being in full possession of their faculties."[34] Author Alice Embree summarized the problem as the women saw it when she wrote:

> The mass media molds everyone into more passive roles. . . But what it does to everyone, it does to women even more. The traditional societal role for women is already a passive one, already one of a con-

> sumer, already one of an emotion non-intellectual who isn't supposed to think or act beyond the confines of her own home. The mass media reinforces all these traits.[35]

As a part of the effort to change the media image of women and to prepare to challenge television broadcasters on legal grounds, in 1971 NOW launched a campaign to monitor network and local broadcasting across the country. They asked women to watch TV and fill in detailed forms analyzing the image of women portrayed as well as the quantity and quality of programs for and about women. The goal was to single out particularly bad stations and then submit a petition to the FCC asking that the stations' license renewals be denied.[36] Women's subsequently used the data they collected as evidence to challenge the licenses of seven television stations. However, only the NOW actions against WRC-TV in Washington, D.C. and WABC-TV in New York City received extensive consideration from the FCC and reached the federal courts on appeal from the Commission's decision.[37]

NOW filed petitions to deny against WRC and WABC at the time those stations applied for license renewals in 1972; the complaints were based on the stations' performance during the preceeding three-year period. Following rules established by the FCC, the two stations filed their opposition to the petitions in early 1973, and numerous responsive and supplemental pleadings were later filed by both sides. Because the FCC had not ruled on the NOW petitions by the fall of 1974, the women brought an appeal to the U. S. Court of Appeals, District of Columbia Circuit, alleging that the Commission's long delay amounted to a denial of their petitions. A motions panel of the Court ordered the FCC to act on the petitions within sixty days or give reasons for further deferring action. Finally, in the spring of 1975 the Commission issued its memorandum opinions and orders denying the petitions and refusing to hold hearings on the questions they raised. NOW quickly appealed this ruling to the Circuit Court.[38]

The initial petitions to deny submitted by NOW focused on four areas of concern including WRC and WABC's alleged failures to comply with ascertainment, programming, equal employment and fairness doctrine requirements.[39] With respect to the fairness doctrine, NOW argued that women's role in society is a controversial issue of public importance, but that in their news, public affairs, entertainment and commercial programming WRC and WABC presented only one side of the issue.

In support of the first part of this argument, NOW submitted copious evidence to prove that the role women should play in society is the subject of national debate arising from a wide divergence of opinion among competing groups. The evidence included newspaper and magazine articles, professional and academic journals, dissertations, government reports and public opinion polls. Based on this evidence, NOW argued that "the rebirth of feminism in America has raised serious questions about the way people live - about their families, home, child rearing, jobs, government and the nature of the sexes themselves."[40]

Having established that the fairness doctrine could be invoked because a controversial issue of public importance was involved, NOW proceeded to present evidence that from 1969 to 1972 WRC and WABC had aired only one side of the controversy through their "overwhelming one-dimensional portrayal of women as wives, mothers, homemakers and sex objects, valued primarily for their supportive services and their physical attractiveness."[41] Relying on the data collected in their two-month monitoring study of WRC and WABC, NOW alleged that the overall programming of the stations presented more men than women, portrayed women in stereotyped, domestic roles and characterized women in ways suggesting they are emotional, child-like persons.[42]

In their opposition briefs, WRC and WABC conceded that the role of women in society is a controversial issue of public importance. However, the stations argued that only programming which explicitly discusses women's problems raises fairness questions. Therefore, entertainment programming and commercials cannot trigger fairness doctrine obligations because, at best, they raise the problem of women's role and rights only implicitly. Nevertheless, WABC submitted a list of entertainment programs broadcast during the 1969-72 license term which portrayed women in assertive and non-traditional roles. In addition, both stations filed extensive exhibits of their logs to prove that their news and public affairs programming had represented diverse and contrasting views on women's issues.[43]

NOW responded to the opposition briefs with arguments relying heavily on legal precedent. The women cited three recent cases in which the courts said that the effect of the use of certain products on the individual and society was controversial. Therefore, the courts held, advertisements which implied these products were good and desirable raised a controversial issue and were subject to fairness doctrine obligations.[44] NOW urged the FCC to apply these rulings to commercials and entertainment programming which portrays women in a stereotyped, domestic role. The role of women is controversial, NOW reasoned, thus commercials and entertainment programs which imply that the role of women is one-dimensional also raise fairness doctrine obligations.[45]

After reviewing all of these arguments, the FCC rejected NOW's petitions out-of-hand without benefit of an evidentiary hearing. In separate opinions on each of the license renewal challenges, the Commission began its discussion of fairness doctrine questions with a broad disclaimer regarding FCC authority over broadcast programming. "The watchword in Commission review of station action under the fairness doctrine is licensee discretion," the FCC said; therefore, they would only examine these stations' "over-all performance" and "good faith efforts," not their "specific errors."[46] The Commission agreed that the role of women in society is a controversial issue of public importance, but dismissed NOW's allegations that WRC and WABC had discussed only one side of the issue. Citing the program logs submitted by the two stations, the Commission held that both stations had presented a reasonable amount of programming representing a multiplicity of views on women's role in society.[47]

The Commission relied on its 1974 Fairness Report to dismiss NOW's claims that WRC and WABC's entertainment programming was unfair to women. They agreed that entertainment programming could raise a controversial issue, but only if the programming "constituted a discussion" of the role of women which amounted to "advocating a position" on the issue. The data NOW collected in its monitoring study and the statistics the organization presented on the number of women on TV, the stereotypes of women and the characterizations of women did not, according to the Commissioners, meet these criteria. Fairness doctrine obligations, the FCC reasoned, are rooted in the dialogue that occurs, not in the "mere depiction" of a role by a woman. Furthermore, the FCC said, although it is possible to raise controversial issues implicitly, commercials or entertainment programming must bear more than a "tenuous relationship" or relationship drawn by "unnecessay inference" before the fairness doctrine would be applicable. The Commission concluded that NOW's descriptions of women's roles portrayed on television were "too insubstantial or ambiguous" to link to a controversial issue of public importance.[48]

The NOW appeal of the WRC and WABC decisions asked the District of Columbia Circuit Court of Appeals to order a hearing on the FCC's fairness doctrine determinations. The women's organization claimed that the Commissioners erred in their conclusion that the stations' commercials and entertainment programming did not constitute a "discussion" of women's role in society. NOW charged that this con-

clusion is "naive" and "flies in the face" of findings by researchers and by the Citizens Advisory Council on the Status of Women which demonstrate that television presents a false and demeaning portrayal of women that has a real impact on social values and children's learning.[49] The Court refused to decide whether or not WRC and WABC programming amounted to a "discussion" of women's issues because, according to the Court, even if the programs raised a controversial issue, the stations "appear" to have aired a reasonable number of conflicting viewpoints on women's roles. In addition, the Court held that the FCC's examination of the stations' overall programming was not arbitrary or capricious; therefore, a hearing was not necessary.[50]

The strategies employed by NOW in their efforts to invoke the fairness doctrine were logical and consistent. Given the dual obligations required by the doctrine, NOW properly first demonstrated that women's role in society is a controversial issue, then moved to show that the stations had not aired a diversity of viewpoints on this issue. In addition, NOW accepted the quasi-judicial framework within which the FCC operates and utilized legal precedents to advance their arguments.

However, the Commission's long delay in ruling on NOW's petitions obviously hampered the women's tactics. As Commissioner Quello points out in his concurring statement on both cases: "I believe that this decision was justified but not necessarily just insofar as justice delayed is justice denied."[51] The women prepared their arguments based on guidelines for fairness doctrine complaints contained in the 1964 Fairness Primer and on precedents established by the FCC in its fairness decisions prior to 1972. Yet after NOW filed its petitions and responses, but before the 1975 disposition of the petitions the FCC concluded its fairness doctrine inquiry and issued its 1974 report on the doctrine which superseded the Fairness Primer and earlier FCC fairness decisions. A significant section of this report deals with the definition of an implicitly raised controversial issue and establishes guidelines for determining when such an issue is raised.[52] As was noted earlier, the FCC used this section to reject NOW's contentions that WRC and WABC's commercials and entertainment programming raised a controversial issue. Thus NOW's fairness complaints may have failed because the FCC knew more about the meaning and application of the fairness doctrine in 1975 than NOW did in 1972.

Several weaknesses in NOW's strategies and arguments might also explain the rejection of the fairness complaints. For example, NOW's monitoring study from which they argued that the station's overall programming was one-sided covered only a two-month period and was, thus, based on a very small sample. The argument did not carry with the FCC or the Court when the stations introduced their lengthy exhibits of all the women's programming they had aired in a three-year period--programming NOW's monitors had missed. Furthermore, NOW utilized volunteers from within the women's movement to conduct the monitoring study. WRC asserted in its opposition brief that "virtually everyone associated with the monitoring study had a vital interest in the outcome of the studies and entered the project with a firm expectation of what the outcome would be."[53] This accusation and NOW's failure to answer it in their counter-response must have lessened the credibility of the study in the eyes of the FCC and the Court.

More forceful explanations for the rejection of the NOW petitions are inherent in the written opinions of the FCC and the Court of Appeals. Both emphasize the limitations on government regulation of broadcasting, and the FCC defers to the broad discretion of the lincensee while the Court defers to the broad discretion of the FCC. It is obvious that with respect to the fairness doctrine the government is walking a tight-rope; they are committed to assuring fairness on and access to the airwaves, yet are fearful of infringing on the First Amendment rights of broadcasters. Thus a basic problem with the fairness doctrine, exemplified in

the WRC and WABC cases, is the conflict between the government's application of the doctrine and the consitutional prohibitions on government censorship of the broadcast media.

The FCC and the Court of Appeals rejected NOW's allegations of fairness doctrine violations largely because they accepted the licensees' own judgments that their programming was balanced, and they refused to "delve" more deeply into the programming judgments of the station than the government is permitted to go.[54] NOW argued before the FCC that a closer examination of a station's programming by the FCC would not constitute a violation of the First Amendment or Communications Act prohibitions on censorship. The goal of such an examination, NOW said, "is to achieve a more balanced and fair portrayal of women. . .not by the elimination, but rather by the addition, of programs presenting a different point of view of women than is usually offered by the station."[55] Unfortunately, NOW did not pursue this line of reasoning before the Court who might have accepted the proposition that there are no prior restraint or censorship dangers in applying the fairness doctrine as long as the FCC only attempts to achieve balance by requiring the addition of specific kinds of programs to a station's broadcast schedule.

III

The description and analysis of the history of the fairness doctrine and of NOW's fairness doctrine complaints before the FCC and the Court of Appeals demonstrates the confusion and ambiguity surrounding that policy. Moreover, the discussion suggests that because of the difficulty in defining the doctrine and establishing boundaries for its application, the government and minority groups must seek alternative ways to maintain a diversity of views and opinions in broadcasting's marketplace of ideas.

Two possible alternatives suggested by the Court of Appeals would help assure that broadcasters provide fair and balanced coverage of controversial issues without intruding on the First Amendment.[56] First, the Court advises the FCC to actively pursue a policy of equal employment opportunity in the broadcasting industry in order to ensure that licensees' programming fairly reflects the tastes and viewpoints of minority groups. In counseling this course of action, the Court assumes that if a station hires more women the station will be more aware of women's problems and will provide programs responding to these problems and expressing the views of women. Presumably, this assumption would apply to other minorities.

Secondly, the Court supports the suggestion made by Commissioner Hooks in his separate opinion in the WBC and WABC cases. Hooks argued that NOW's grievances transcend the programming of a particular station and may be endemic of television institutionally. Therefore, he advises the Commission to abandon its multiple, and ad hoc fairness doctrine proceedings and to launch a general inquiry into the women's grievances. This inquiry, Hooks said could result in guidelines on fairness in women's programming for the entire television industry.[57] Both Hooks and the Court imply that this procedure may also be applicable to other large minority groups trying to gain access to the media through fairness doctrine complaints.

Another alternative open to minority groups is to increase their activity at the local level in order to sensitize broadcasters to their needs. Such action would be essentially outside the scope of FCC regulation. As the Court suggests in Stone v. FCC:

> Although a petitioner may not succeed in depriving a broadcaster of its license, there remain numerous ways--for example, more vigorous

ascertainment responses and economic, moral and social pressures--in which a unified community can shape the programming of a licensee, and which effectively supplement the constitutional and statutory authority of the FCC.[58]

In the final analysis, it may be necessary for the government, minority groups and others who desire broadcast programming which reflects the diversity of individuals and opinions in our society and allows contrasting ideas to clash in an open forum to abandon the fairness doctrine and develop other means to achieve their goals.

Footnotes:

1. John Stuart Mill, "On Liberty," in The Six Great Humanistic Essays of John Stuart Mill, ed. Albert William Levi (New York: Washington Square Press, 1963), Chap. II, pp. 144-146; John Milton, Areopagitica, ed. K.M. Lea (Oxford: Clarendon Press, 1973), p. 58.
2. Abrams v. United States, 250 U.S. 616, 630 (1919), dissent of Justice Holmes.
3. Editorializing by Broadcast Licensees, 13 F.C.C. (1949). Hereinafter cited as Editorializing Report.
4. "Fairness Doctrine Legislation," Broadcasting, January 2, 1978, p. 48.
5. See generally, Daniel L. Brenner, "TV Access: The New Soapbox," America, May 6, 1972, pp. 477-79; Louis L. Jaffe, "The Editorial Responsibility of the Broadcaster: Reflections on Fairness and Access," Harvard Law Review 85 (1972): pp. 780-92; Richard A. Kurnit, "Enforcing the Obligation to Present Controversial Issues: The Forgotten Half of the Fairness Doctrine," Harvard Civil Rights-Civil Liberties Law Review 10 (Winter 1975), pp. 158-60.
6. Chris Welles, "The Fairness Doctrine," TV Guide, August 30, 1975, pp. 5, 7, 9.
7. Ibid., pp. 7-9.
8. Ibid., p. 5.
9. Radio Act of 1927, Public Law 632, 69th Congress, 1927, Sections 3, 29, 4.
10. The Radio Act of 1927 was replaced by the Communications Act of 1934, Public Law 416, 73rd Congress, 1934. The new Act replaced the FRC with the FCC and charged the new Commission with essentially the same responsibilities and prohibitions with respect to licensing stations, serving the public interest and censorship.
11. In Trinity Methodist Church, South v. FRC, 62 F. 2d 850 (1932), cert. denied 284 U.S. 685 (1932), the Federal Appeals Court ruled that the FRC could deny a radio broadcaster a new license if the broadcaster had failed to serve the public interest, convenience and necessity. Later, in National Broadcasting Co. v. United States, 319 U.S. 190 (1943), the Supreme Court declared that the FCC denial of a license based on a station's failure to serve the public interest was not a violation of the First Amendment.
12. In re United Broadcasting Co. (WHKC), 10 F.C.C. 515, 517 (1945); In re Petition of Robert Harold Scott, 11 F. C. C. 372, 376 (1946).

13. In Mayflower Broadcasting Co., 8 F.C.C. 333 (1941), the FCC held that broadcasters could not editorialize over the air. The Commission reversed this policy in 1949, explaining licensees' responsibilities with respect to airing opinions and articulated the fairness doctrine. Ibid., Editorializing Report.
14. Ibid., pp. 1249, 1258.
15. When the equal time requirements for candidates for political office were added to the Communications Act in 1959, Congress included these words: "Nothing in the foregoing sentence shall be construed as relieving broadcasters . . . from the obligation imposed on them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance." Communications Act of 1934, amended 1959, Sec. 315(a). Although there is some disagreement about the meaning of this paragraph, most authorities agree that it provides the necessary statutory authorization for the FCC to enforce the fairness doctrine. See, for example, Jerome A. Barron, "The Federal Communication's Commission's Fairness Doctrine: An Evaluation," George Washington Law Review 30 (1960), pp. 1-32.
16. Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance, 40 F.C.C. 598 (1964). Hereinafter cited as 1964 Fairness Primer.
17. 359 F. 2d 994 (D.C. Cir. 1966). Prior to this decision, only other licensees alleging economic injury of electrical interference were granted legal standing to intervene in FCC licensing determinations.
18. Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 390 (1969).
19. Ibid.
20. The number of fairness doctrine complaints filed with the FCC increased from 409 in 1962 to more than 1700 in 1970. Brenner, "TV Access," p. 477; U.S. Federal Communications, 36th Annual Report/FY 1970 (Washington, D.C.: Government Printing Office, 1970), p. 151.
21. 1964 Fairness Primer, pp. 599-600.
22. WCBS-TV, 8 F.C.C. 2d 381 (1967); Applicability of the Fairness Doctrine to Cigarette Advertising, 9 F.C.C. 2nd 921 (1967).
23. In re Wilderness Society and Friends of the Earth, 30 F.C.C. 2nd 643 (1971).
24. Brandywine-Main Line Radio, Inc., 24 F.C.C. 2d 2218 (1970).
25. Affirmed, Larus & Brother Co. v. FCC, 477 F. 2d 876 (4th Cir. 1971).
26. David Green, 24 F.C.C. 2d 171 (1970).
27. Retail Clerks International Association, 14 F.C.C. 2d 423 (1969).
28. Friends of the Earth, 24 F.C.C. 2d 743 (1970).
29. The courts reversed the FCC rulings which denied reply time to the labor union and anti-pollution groups, Retail Store Employees Union, et. al. v. FCC 436 F. 2d 248 (1970) and Friends of the Earth v. FCC, 449 F. 2d 1164 (D.C. Cir. 1971), but affirmed the FCC denial of reply time to peace groups and the Commission's reversal of the cigarette reply time rule, Green v. FCC, 477 F. 2d 323 (D.C. Cir. 1971) and Larus & Brother Co. v. FCC, 477 F. 2d 876 (4th Cir. 1971).
30. U.S. Federal Communications Commission, 37th Annual Report/FY 1971 (Washington, D.C.: Government Printing Office, 1971), p. 147: 38th Annual Report/FY 1972 (Washington, D.C.: Government Printing Office, 1972), p. 171.
31. In the Matter of the Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards of the Communications Act: Notice of Inquiry, 30 F.C.C. 2d 26 (1971).
32. Exerpt from National Organization of Women Statement of Purpose adopted at the Organizational Conference, October 29, 1966.
33. Carolyn Bird, "What's Television Doing for 50.9% of Americans?" TV Guide, February 27, 1971, p. 6.

34. As quoted in Edith Efron, "Is Television Making a Mockery of the American Woman?" TV Guide, August 8, 1970, p. 9.
35. Alice Embree, "Media Images I: Madison Avenue Brain Washing--The Facts," in Sisterhood is Powerful, ed. Robin Morgan (New York: Vintage Books, 1970), p. 181.
36. Barbara Deckard, The Women's Movement (New York: Harper and Row, 1975), p. 380.
37. National Broadcasting Co., Inc., 33 RR 2d 244, 1975, hereinafter cited as WRC; American Broadcasting Co., Inc., 33 RR 2d 305, 1975, hereinafter cited as WABC. Other petitions to deny license renewals brought by women's groups associated with NOW, rejected by the FCC and not appealed to the courts include: Capital Cities Communications, Inc., 36 RR 2d 609 (1976); Mt. Hood Radio and TV Broadcasting, 36 RR 2d 543 (1976); CBS, Inc., 35 RR 2d 1521 (1975); KCOP-TV, Inc., 35 RR 2d 383 (1975); and Metromedia, Inc., 35 RR 2d 418 (1975).
38. For a summary of the proceedings in these cases, see National Organization of Women, et. al. v. FCC and United States, 40 RR 2d 679, 683-84 (D.C. Circ. 1977), hereinafter cited as NOW v. FCC and U.S.
39. The FCC has promulgated specific rules requiring licensees to ascertain the problems and needs in their communities by interviewing community leaders and conducting public opinion polls, to provide programming responsive to these problems and needs, and to upgrade employment practices by complying with the Equal Opportunity Employment Act. In addition to the fairness doctrine complaints in its petitions to deny the license renewals of WRC and WABC, NOW charged that the stations had ignored women in all of the above areas. Both the FCC and the Court of Appeals dismissed these charges, but the Court was sympathetic to the charges of failing to ascertain women's needs and upgrade female employment and urged the FCC to be watchful of these areas in future WRC and WABC license renewals. See NOW v. FCC and U.S., pp. 686-690, 699-705.
40. WABC, p. 321; WRC, p. 255.
41. Ibid.
42. WRC, pp. 255-56; WABC, pp. 321-22.
43. WRC, pp. 256-57.
44. Banzhaf v. FCC, 405 F. 2d 1082 (D.C. Cir. 1968); Ibid., Retail Store Employees Union and Friends of the Earth.
45. WRC, pp. 257-58; WABC, p. 323.
46. WABC, p. 327; WRC, pp. 258-60.
47. WABC, p. 322.
48. WABC, pp. 327-28; WRC, p. 258.
49. NOW v. FCC and U.S., pp. 697-98.
50. Ibid., p. 698.
51. WABC, p. 337; WRC, p. 274. Concurring Statement of Commissioner James H. Quello.
52. Fairness Doctrine and Public Interest Standards, 39 Fed. Reg. 139, 26381, July 18, 1974.
53. WRC, p. 252.
54. WABC, p. 322.
55. WRC, p. 258; WABC, p. 323.
56. NOW v. FCC and U.S., pp. 692-93.
57. WRC, p. 273. Statement of Commissioner Benjamin L. Hooks, Concurring in part, dissenting in part.
58. Stone v. FCC, 466 F. 2d 316, 332 (1972).